

AMENDED IN SENATE AUGUST 30, 2005

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 550

**Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Cohn, Dymally, Koretz, and
Spitzer)**

(Coauthors: Senators Kuehl and Speier)

February 16, 2005

An act to add Article 3 (commencing with Section 2635) to Chapter 3 of Title 1 of Part 3 of the Penal Code, relating to correctional institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 550, as amended, Goldberg. Correctional institutions: sexual abuse.

Existing law provides that an employee with a department, board, or authority under the Youth and Adult Correctional Agency or a facility under contract with a department, who, during the course of his or her employment directly provides treatment, care, control, or supervision of inmates, wards, or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward, or parolee, is punishable by a fine not exceeding \$1,000, imprisonment in a county

jail for a period not exceeding 6 months, or by both that imprisonment and fine, or by a fine of not more than \$10,000, imprisonment in a county jail for a period not exceeding one year or in the state prison, or by both that fine and imprisonment. Existing law provides that a 2nd or subsequent violation of these provisions is punishable by imprisonment in the state prison and that anyone who is convicted of a felony violation of this section shall be terminated, as specified, and shall not be eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.

This bill, the Sexual Abuse in Detention Elimination Act, the purposes of which would be to protect all inmates and wards from sexual abuse while held in institutions operated by the Department of Corrections and ~~the Department of the Youth Authority~~ *Rehabilitation* would require that the Department of Corrections and ~~the Department of the Youth Authority~~ *Rehabilitation* not hire any person who has been convicted of, or determined administratively to have committed, a sexual abuse-related offense for any position that involves inmate or ward contact.

~~This bill would also require these agencies to provide training to their corrections staff that includes, among other things, the communication of a clear statement that sexual abuse of inmates and wards is a crime that will be reported to law enforcement. This bill would require these agencies~~ *the agency* to provide inmates ~~and wards, wards, and correctional staff members~~ with information in the form of a pamphlet describing the department's policies related to sexual conduct and the channels by which abuse should be reported.

This bill would require the Department of Corrections and ~~the Department of the Youth Authority~~ *Rehabilitation* to adopt specified policies, practices, and protocols related to the placement of inmates, physical and mental health care of inmate victims, and investigation of sexual abuse.

This bill would also create the Office of the Sexual Abuse in Detention Elimination Ombudsperson to ensure impartial resolution of inmate and ward sexual abuse complaints.

This bill would require the Department of Corrections and ~~the Department of the Youth Authority~~ *Rehabilitation* to develop guidelines for allowing outside organizations and service agencies to provide resources and counseling to inmates and wards and to provide general information on the prevalence of prisoner rape to other agencies and ~~their~~ *its* staff who may encounter survivors of sexual

abuse in detention intended to increase their awareness of, and sensitivity to, the issue of sexual abuse in detention.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
2 Sexual Abuse in Detention Elimination Act.
- 3 SEC. 2. The Legislature hereby finds and declares that the
4 purposes of the Sexual Abuse in Detention Elimination Act
5 include, but are not limited to, all of the following:
- 6 (a) To protect all inmates and wards from sexual abuse while
7 held in institutions operated by the Department of Corrections
8 and ~~the Department of the Youth Authority~~ *Rehabilitation*.
- 9 (b) To make the prevention of sexual abuse in detention a top
10 priority in all state detention institutions.
- 11 (c) To ensure that the Department of Corrections and ~~the~~
12 ~~Department of the Youth Authority~~ *Rehabilitation* develop and
13 implement protocols and procedures designed to effectively
14 respond to sexual abuse in detention while protecting the safety
15 of victims.
- 16 (d) To ensure that data collection concerning sexual abuse
17 across all institutions is accurate and accessible to the public.
- 18 (e) To increase the accountability of the Department of
19 Corrections and ~~the Department of the Youth Authority~~
20 *Rehabilitation* officials, wardens, and other staff who fail to
21 detect, prevent, reduce, and respond to sexual abuse in detention.
- 22 (f) To protect the 8th amendment right of inmates and wards
23 to be free from cruel and unusual punishment as guaranteed by
24 the United States Constitution.
- 25 (g) To protect the right of inmates and wards to be free from
26 cruel and unusual punishment as guaranteed by Section 24 of
27 Article 1 of the California Constitution.
- 28 (h) To establish an Office of the Sexual Abuse in Detention
29 Elimination Ombudsperson to monitor the prevention of and
30 response to sexual abuse that occurs in the Department of
31 Corrections and ~~the Department of the Youth Authority~~
32 *Rehabilitation* institutions.

1 (i) To increase the efficiency of state expenditure on
2 corrections, correctional physical and mental health care,
3 substance abuse reduction, HIV/AIDS prevention, violence
4 prevention, and reentry programs for inmates and wards.

5 (j) To ensure compliance with the federal Prison Rape
6 Elimination Act of 2003, Public Law 108-79.

7 SEC. 3. Article 3 (commencing with Section 2635) is added
8 to Chapter 3 of Title 1 of Part 3 of the Penal Code, to read:

9

10 Article 3. Sexual Abuse in Detention

11

12 2635. (a) ~~No~~ *For all employees hired by the Department of*
13 *Corrections and Rehabilitation after the date this section*
14 *becomes effective, no individual convicted of a sexual*
15 *abuse-related offense, nor any individual who has been*
16 *determined administratively to have committed a sexual offense*
17 *shall be eligible for employment in a position that involves*
18 *inmate or ward contact.*

19 ~~(b) The Department of Corrections and the Department of the~~
20 ~~Youth Authority shall provide training for current and future~~
21 ~~corrections staff members that shall include, but is not limited to,~~
22 ~~the following:~~

23 ~~(1) A clear statement that sexual abuse of inmates and wards is~~
24 ~~a crime that will be reported to law enforcement authorities.~~

25 ~~(2) Strategies for identifying and protecting potential victims.~~

26 ~~(3) Information about how to appropriately respond when an~~
27 ~~inmate or ward discloses sexual abuse, including respecting the~~
28 ~~victim's confidentiality.~~

29 ~~(4) Information about reporting and tracking incidents of~~
30 ~~sexual abuse.~~

31 ~~(e) The requirements of this section apply to all employees,~~
32 ~~including contract employees, volunteers, health care~~
33 ~~professionals, and anyone who has contact with inmates and~~
34 ~~wards, on or off facility grounds.~~

35 2636. ~~The Department of Corrections and the Department of~~
36 ~~the Youth Authority Rehabilitation shall provide all inmates and~~
37 ~~wards, wards, and correctional staff members, including anyone~~
38 ~~formally affiliated with the Department of Corrections and~~
39 ~~Rehabilitation who has physical contact with inmates or wards,~~
40 ~~with a handbook, available in English and Spanish, describing~~

1 policies related to sexual conduct that shall contain, but is not
2 limited to, the following elements:

3 (a) An assertion of each person’s right to be free from sexual
4 abuse and the institution’s explicit prohibition of acts of sexual
5 abuse.

6 (b) A definition of abuse that uses clear, frank language, and
7 includes the indicators of inappropriate staff relationships with
8 inmates or wards.

9 (c) Information about the availability of confidential mental
10 health counseling following sexual abuse.

11 (d) A clear explanation of the steps the inmate or ward must
12 take to file a grievance related to sexual abuse, an outline of the
13 appeal process, and an explanation of how the inmate will know
14 that internal remedies have been exhausted.

15 (e) An explanation that the normal chain of command can be
16 breached for the reporting of sexual abuse, and a list of
17 individuals in the institution to whom inmates and wards can
18 make these reports.

19 (f) An assurance that the initial report will be confidential and
20 that the inmate will have the option of whether or not to move
21 forward with his or her initial complaint.

22 (g) An assurance that retaliation against victims of sexual
23 assault for coming forward with grievances will not be tolerated.

24 (h) Information about how to request being housed in or out of
25 segregation.

26 (i) A description of emergency medical procedures following
27 sexual assault incidents, including the importance of timely
28 reporting and refraining from showering after an assault.

29 (j) Information about how to contact the Office of the Sexual
30 Abuse in Detention Elimination Ombudsperson.

31 2637. The following practices shall be instituted to prevent
32 sexual violence and promote inmate and ward safety in the
33 Department of Corrections and ~~the Department of the Youth~~
34 ~~Authority Rehabilitation~~:

35 (a) The Department of Corrections and ~~the Department of the~~
36 ~~Youth Authority Rehabilitation~~ classification and housing
37 assignment procedures shall take into account risk factors that
38 can lead to inmates and wards becoming the target of sexual
39 victimization or of being sexually aggressive toward others.
40 Relevant considerations include:

1 (1) Age and size of the inmate or ward.

2 (2) Whether the offender is a violent or nonviolent offender.

3 (3) Whether the inmate or ward has served a prior term of
4 commitment.

5 (4) Whether the inmate or ward has a history of mental illness.

6 (b) The Department of Corrections and ~~the Department of the~~
7 ~~Youth Authority~~ *Rehabilitation* shall ensure that staff members
8 intervene when an inmate appears to be the target of sexual
9 harassment or intimidation.

10 (c) The Department of Corrections and ~~the Department of the~~
11 ~~Youth Authority~~ *Rehabilitation* shall, whenever possible, assign
12 at least one female officer per shift to any housing unit or any
13 area of any facility in which female detainees may be observed
14 unclothed.

15 2638. The Department of Corrections and ~~the Department of~~
16 ~~the Youth Authority~~ *Rehabilitation* shall ensure that its protocols
17 for responding to sexual abuse include all of the following:

18 (a) The safety of an inmate or ward who alleges that he or she
19 has been the victim of sexual abuse shall be immediately and
20 discreetly ensured. The housing option of the victim shall be
21 followed to the greatest extent possible. Staff shall provide the
22 safest possible housing options to inmates and wards who have
23 experienced repeated abuse. Housing options may include
24 discreet institution transfers.

25 (b) Inmates and wards who file complaints shall not be
26 punished, either directly or indirectly. Administrative segregation
27 of those who report abuse shall not be automatic, unless
28 requested by the victim. If a person is segregated for his or her
29 own protection, segregation must be nondisciplinary, and shall
30 not result in any loss of privileges.

31 (c) Any person who knowingly or willfully submits inaccurate
32 or untruthful information in regards to sexual abuse is punishable
33 pursuant to department regulations.

34 (d) Under no circumstances is it appropriate to suggest that an
35 inmate should fight to avoid sexual violence or to suggest that the
36 reported sexual abuse is not significant enough to be addressed
37 by staff.

38 (e) Staff shall not discriminate in their response to inmates and
39 wards who are gay, bisexual, or transgender who experience

1 sexual aggression, or report that they have experienced sexual
2 abuse.

3 (f) Retaliation against an inmate or ward for making an
4 allegation of sexual abuse shall be strictly prohibited.

5 (g) *Every employee of, and anyone formally affiliated with the*
6 *Department of Corrections and Rehabilitation who has physical*
7 *contact with inmates or wards, is required to read the handbook*
8 *described in Section 2636 in order to be familiar with the*
9 *department protocols described therein.*

10 2639. Thoughtful, confidential standards of physical and
11 mental health care shall be implemented to reduce the impact of
12 sexual abuse on inmates and wards in the Department of
13 Corrections and ~~the Department of the Youth Authority~~
14 *Rehabilitation* that include all of the following:

15 (a) Clinics shall have a protocol in place to respond when
16 sexual abuse is suspected, and all practitioners shall be trained
17 accordingly.

18 (b) Victims shall receive appropriate acute-trauma care for
19 rape victims, including treatment of injuries, HIV/AIDS
20 prophylactic measures, emergency contraception, and, later,
21 testing for sexually transmissible diseases.

22 (c) Health practitioners who conduct or encounter an inmate or
23 ward suffering from problems that might indicate sexual abuse,
24 such as trauma, sexually transmissible diseases, pregnancy, or
25 chronic pain symptoms, shall ask whether the patient has
26 experienced sexual abuse.

27 (d) Practitioners should strive to ask frank, straightforward
28 questions about sexual incidents without shaming inmates or
29 displaying embarrassment about the subject matter.

30 (e) When a sexual assault victim is treated outside of a
31 corrections institution, hospital staff and rape crisis center
32 representatives shall be allowed to consult with the victim in
33 private.

34 (f) Confidential mental health counseling intended to help the
35 victim to cope with the aftermath of abuse shall be offered to
36 those who report sexual abuse. Victims shall be monitored for
37 suicidal impulses, posttraumatic stress disorder, depression, and
38 other mental health consequences.

39 (g) Any adult inmate in counseling for any reason shall be
40 entitled to speak confidentially about sexual abuse. Policies that

1 require staff members to disclose infractions committed at the
 2 institution shall be amended to except sexual abuse. All inmates
 3 who receive counseling for any reason shall be informed of this
 4 confidentiality policy.

5 (h) Institutions shall, whenever possible, assist victims of
 6 sexual abuse in detention upon their release.

7 2640. The Department of Corrections and ~~the Department of~~
 8 ~~the Youth Authority~~ *Rehabilitation* shall ensure that the
 9 following procedures are performed in the investigation and
 10 prosecution of sexual abuse incidents:

11 (a) Adult inmate victims shall be entitled to choose whether to
 12 move forward with charges of abuse. The provision of safe
 13 housing options, medical care, and the like shall not be
 14 contingent upon the victim’s willingness to press charges.

15 (b) Investigations into allegations of sexual abuse shall include
 16 the use of forensic rape kits, questioning of suspects and
 17 witnesses, and gathering of other relevant evidence.

18 (c) Physical and testimonial evidence shall be carefully
 19 preserved for use in any future proceedings.

20 (d) Staff attitudes that inmates and wards cannot provide
 21 reliable information shall be discouraged.

22 (e) If an investigation confirms that any employee has sexually
 23 abused an inmate or ward, that employee shall be terminated.
 24 Administrators shall report criminal sexual abuse by staff to law
 25 enforcement authorities.

26 (f) Consensual sodomy and oral copulation among inmates is
 27 prohibited by subdivision (e) of Section 286 and subdivision (e)
 28 of Section 288a, respectively. Without repealing those
 29 provisions, the increased scrutiny provided by this article shall
 30 apply only to nonconsensual sexual contact among inmates and
 31 custodial sexual misconduct.

32 2641. The Department of Corrections and ~~the Department of~~
 33 ~~the Youth Authority~~ *Rehabilitation* shall collect data as follows:

34 (a) The Department of Corrections and ~~the Department of the~~
 35 ~~Youth Authority~~ *Rehabilitation* shall keep statistics on the sexual
 36 abuse of inmates and wards. Sexual abuse incidents shall not be
 37 classified as “other” nor simply included in a broader category of
 38 general assaults.

39 (b) Statistics shall include whether the abuse was perpetrated
 40 by a staff member or other inmate, the results of the

1 investigation, whether the victim chose to press charges, and any
2 resolution of the complaint by department officials and
3 prosecution authorities.

4 (c) The Department of Corrections and ~~the Department of the~~
5 ~~Youth Authority~~ *Rehabilitation* shall keep statistics on
6 self-compliance with this act. The data shall be made available to
7 the Office of the Sexual Abuse in Detention Elimination
8 Ombudsperson.

9 2642. (a) The Office of the Sexual Abuse in Detention
10 Elimination Ombudsperson is hereby created in state government
11 to ensure the impartial resolution of inmate and ward sexual
12 abuse complaints. The office shall be based within the Office of
13 the Inspector General. The duties of this office may be contracted
14 to outside nongovernmental experts.

15 (b) The ombudsperson shall have the authority to inspect all of
16 the Department of Corrections and ~~the Department of the Youth~~
17 ~~Authority~~ *Rehabilitation* institutions and to interview all inmates
18 and wards.

19 (c) The Department of Corrections and ~~the Department of the~~
20 ~~Youth Authority~~ *Rehabilitation* shall allow all inmates and wards
21 to write confidential letters regarding sexual abuse to the
22 ombudsperson.

23 (d) Information about how to confidentially contact the
24 ombudsperson shall be provided in inmate handbooks and clearly
25 posted on placards in all of the Department of Corrections and
26 ~~the Department of the Youth Authority~~ *Rehabilitation*
27 institutions.

28 (e) The Office of the Inspector General shall investigate
29 reports of the mishandling of incidents of sexual abuse, while
30 maintaining the confidentiality of the victims of sexual abuse, if
31 requested by the victim.

32 2643. The Department of Corrections and ~~the Department of~~
33 ~~the Youth Authority~~ *Rehabilitation* shall:

34 (a) Develop guidelines for allowing outside organizations and
35 service agencies to offer resources and provide confidential
36 counseling to inmates and wards, including, but not limited to,
37 the following:

- 38 (1) Rape crisis agencies.
- 39 (2) Hospitals.
- 40 (3) Gay rights organizations.

1 (4) HIV/AIDS service providers.

2 (5) Civil rights organizations.

3 (6) Human rights organizations.

4 (b) Provide general information on the prevalence of prisoner
5 rape to other governmental agencies and their staff who may
6 encounter survivors of sexual abuse in detention, such as parole
7 and probation officers, substance abuse treatment providers, and
8 prisoner reentry professionals, to increase their awareness of, and
9 sensitivity to, the reality that some of their clients may have
10 encountered sexual abuse in detention.

11 2646. The provisions of this act are severable. If any
12 provision of this act or its application is held invalid, that
13 invalidity shall not affect other provisions or applications that can
14 be given effect without the invalid provision or application.